THE HON'BLE SRI JUSTICE N.V.RAMANA

W.P No. 5134 of 2006

O r d e r:

The petitioner, who joined the service of the respondents-Corporation as Driver in 1984, and as he was found with defective vision on 12.08.2003, he was asked to go on forced leave. Therefore, he applied for retirement, and accepting his request, the respondents retired him from service on 28.10.2003. Before he retired from service, the respondents issued notification in PD

No. 14/2003, dated 08.10.2003, informing that the Board vide Resolution No. 128/2003, dated 28.07.2003, has accorded approval for amending Regulation 6A(5)(b) of the APSRTC Employees (Service) Regulations, 1964 (hereinafter referred to as 'the Regulations'), and notified the amendment, which provided better benefits to medical unfit Drivers. In terms of the above amended Regulation 6A(5)(b) of the Regulations, the petitioner states that he took retirement and after retirement on 17.10.2005, made application for grant of additional monetary benefits in lieu of alternative employment, as provided under Section 47 of the Persons with Disabilities Act, 1995, but 2nd the respondent, namely the Depot Manager, vide letter dated 30.12.2005, refused to pay the additional monetary benefits on the ground that he was found medically unfit on 12.08.2003, i.e. much before the amended Regulation 6A(5)(b) of the Regulations came into force on 08.10.2003. The petitioner states that the respondents issued another Circular in PD No. 40/2005, dated 26.08.2005, after obtaining approval from the Government, reiterating the benefits payable under notification in PD No. 14/2003, dated 08.10.2003, and the action of the 2nd respondent, in issuing the impugned letter, rejecting his request for payment of additional

monetary benefits, is illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that though the petitioner was medically invalidated on 12.08.2003, he having been retired from service w.e.f. 28.10.2003, long after the amended Regulation 6A(5)(b) of the Regulations coming into force i.e. from 08.10.2003, is entitled to be granted the additional monetary benefits, and the action of the respondents in rejecting his request for grant of additional monetary benefits on the ground that he was declared medically unfit on 12.08.2003 much prior to the amended Regulation 6A(5)(b) of the Regulations came into force i.e. on 08.10.2003, is illegal and arbitrary, and more so when the amended Regulation 6A(5)(b) of the Regulations, which provided for grant of additional monetary benefits, came to be approved by the Government vide its letter dated 24.06.2005 with effect from 08.10.2003, and as reiterated by the respondents in their Circular issued in PD No. 40/2005, dated 26.08.2005. He, thus prayed that the impugned order be set aside and the writ petition be allowed.

The respondents filed counter. The learned Standing Counsel for the respondents-APSRTC reiterating the stand taken by the respondents in their counter submitted the amended

Regulation 6A(5)(b) of the Regulations came into force from 08.10.2003. Though the petitioner was retired from service on 28.10.2003, the fact remains, he was found medically unfit on 12.08.2003, and having regard to the fact that the amendment came into effect from 08.10.2003, long after the petitioner was found medically unfit, he was not given the benefit, and no exception can be taken to the impugned letter, issued by the 2nd respondent rejecting the request of the petitioner for payment of additional monetary benefits.

In the background of the pleadings of the respective parties, the only short question that falls for consideration in this writ petition is whether the benefit of the amended Regulation 6A(5)(b) of the Regulations, which provided for grant of additional monetary benefits, to employees who are to be retired on being found medically unfit, is extendable to those employees who are found to be medically unfit from the day it came into force i.e. from 08.10.2003 or is not extendable to those who were found medically unfit much before its issuance, but retired from service after its issuance?

The petitioner, admittedly, was found medically unfit on 12.08.2003. On 08.10.2003, the 1st respondent issued notification in PD No. 14/2003, notifying that the Board vide its Resolution No. 128/2003, dated 28.07.2003, has accorded approval for implementation of the amended Regulation 6A(5)(b) of the Regulations, with immediate effect, pending sanction of the Government. The Government through its Principal Secretary in the TR & B Department, vide Letter No. 11073/Tr.II(2)/2003-4, dated 24.06.2005, accorded approval for the amended Regulation 6A(5)(b) of the Regulations w.e.f. 08.10.2003. The respondents also vide Circular issued in PD No. 40/2005, dated 26.08.2005, reiterated that the Government has approved the amendment to Regulation 6A(5)(b) of the Regulations w.e.f. 08.10.2003. Thus, it is clear that the amended Regulation 6A(5)(b) of the Regulations has come into force from 08.10.2003. Though the petitioner was found medically unfit on 12.08.2003, the fact remains, accepting the request of the petitioner, he was retired from 28.10.2003. Inasmuch as the petitioner, who was found medically unfit on 12.08.2003, was retired from service from 28.10.2003, i.e. much after the amendment came into force from 08.10.2003, the respondents cannot be allowed to contend that the amendment, which provided for payment of additional benefits to those employees who are retired on

medical grounds, is applicable only to those employees, who are found medically unfit from the day the amendment came to be notified i.e. 08.10.1003.

In the matter of settlement of benefits to an employee on his retirement, the respondents cannot dispute the fact that the employee who is retired, is entitled to claim all the benefits, which he is entitled to under the different circulars, which were or are in force as on the date of his retirement. It is not the day on which an employee is found medically unfit, but the day on which he is retired from service on being found medically unfit is important. Since the petitioner was retired from service after the amended Regulation 6A(5)(b) of the Regulations came into force, the respondents cannot be allowed to say that the petitioner is not entitled to the benefit of the amended Regulation because he was found medically unfit a day before the amendment came into force. In that view of the matter, the letter dated 30.12.2005 of the 2nd respondent rejecting the request of the petitioner for payment of additional monetary benefits, on the ground that he was found medically unfit on 12.08.2003, i.e. much prior to 08.10.2003, the date on which the amendment came into force, cannot be sustained, and is accordingly quashed.

Accordingly, the writ petition is allowed. The respondents are in terms of Regulation 6A(5)(b) of the Regulations are directed to pay the additional monetary benefits to the petitioner in lieu of alternative employment, as mandated under Section 47 of the Persons with Disabilities Act, 1995, within a period of one month from the date of receipt of a copy of this order. No costs.

N.V. RAMANA, J.

Dated: November, 2006.

Note:

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(B/o)
KSR